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Order 2001-6-18

Served: June 21, 2001



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 21st day of June, 2001

Fitness Determination of

**MOUNTAIN BIRD, INC.
d/b/a SALMON AIR**

as a commuter air carrier under section
49 U.S.C. 41738

Docket OST-00-8059-- 9

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF COMMUTER AIR CARRIER AUTHORITY**

Summary

By this order, we tentatively find that Mountain Bird, Inc. d/b/a Salmon Air (Salmon Air) is a citizen of the United States and is fit, willing, and able to provide interstate scheduled passenger operations as a commuter air carrier using aircraft with up to nine seats.

Background

Section 41738 of Title 49 of the United States Code ("the Statute") and section 298.21(d) of the Department's Aviation Economic Regulations (14 CFR 298.21.(d)) direct us to determine whether companies proposing to provide scheduled passenger service as commuter air carriers are "fit, willing, and able to perform the service," and to ensure that all operations relating to this service conform to the safety standards established by the Federal Aviation Administration (FAA). In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress' concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a carrier's fitness are whether the applicant: (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) has sufficient financial resources to commence the operations proposed without posing an undue risk to consumers or their funds, and (3) will comply with the Statute and regulations imposed by federal and state agencies. We must also determine that the applicant is a U.S. citizen.

On October 4, 2000, Salmon Air filed an application in Docket OST-00-8059 for authority to provide interstate scheduled passenger operations as a commuter air carrier pursuant to

section 41738 of the Statute. Salmon Air accompanied its application with the fitness information required by section 204.3 of our regulations.¹

No answers were filed to the application and no other issues regarding the applicant have come to our attention.² Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record. Upon review of the information in the application and the safety and compliance information on the carrier received from the FAA, we tentatively conclude that Salmon Air is a U.S. citizen and has met the fitness test to conduct commuter operations. We will, however, give interested parties an opportunity to show cause why we should not adopt as final our tentative determination that Salmon Air is fit, willing, and able to provide commuter service.

The Company

Salmon Air, based in Salmon, Idaho, is an Idaho corporation organized on March 10, 1982. It has been conducting air taxi operations in that area of the country since then.³ The company is owned by JoAnn Wolters and her husband, Daniel Schroeder.⁴

At present, Salmon Air has a fleet of nine aircraft--three 9-seat Piper Chieftans, one 9-seat Britten Norman Islander, one 9-seat Cessna Caravan, two 2-seat Cessna 206s, one 4-seat Cessna 172, and one 2-seat Cessna 150.⁵ As part of its operation, the company has been providing three scheduled weekly round trips between Salmon and Boise, Idaho, using one of its Piper Chieftan aircraft.⁶ If granted commuter authority, it intends to add additional flights between Salmon and Boise.

FITNESS

Managerial Competence

Ms. Wolters and Mr. Schroeder have managed Salmon Air's operations since 1982. Ms. Wolters is the carrier's President and Mr. Schroeder is its Director of Operations.⁷ Prior to purchasing Salmon Air, both Ms. Wolters and Mr. Schroeder were instructors at Emery School of Aviation in Greeley, Colorado. Completing Salmon Air's current management team are Mr. James Gebhardt, who has been the carrier's Director of Maintenance since 1988, and Mr. Stanley DeLong, who was appointed to the position of Chief Pilot in April

¹ Salmon Air subsequently supplemented its application with additional information.

² On May 29, 2001, Eagle Canyon Airlines, Inc. d/b/a Scenic Airlines (Scenic) submitted a letter commenting on Salmon Air's application.

³ The company was originally formed to take over the operations of another air taxi, Salmon Air Taxi. Initially, its business provided charter services to white-water rafters and hunters in the area. Since then it has branched into other passenger and cargo charter services, including cargo contract services for United Parcel Service.

⁴ Ms. Wolters holds 51 percent of the stock; Mr. Schroeder holds the remaining 49 percent.

⁵ Eight of the company's aircraft are owned by Ms. Wolters and Mr. Schroeder through a related company.

⁶ The applicant advises that, in addition to the three scheduled flights, it also provides numerous charter flights in the same market.

⁷ Ms. Wolters holds an FAA Commercial Pilot license. Mr. Schroeder holds an FAA Airline Transport Pilot license. Prior to April of this year, Mr. Schroeder also held the position of Chief Pilot.

2001. Mr. Gebhardt holds an FAA Airframe and Powerplant Mechanic license. Prior to joining Salmon Air, Mr. Gebhardt was a mechanic for four years with several other air taxi operators. Mr. DeLong has extensive experience as a pilot with Part 135 air carriers. In this connection, he was employed for 12 years with Ameriflight, a large California-based air taxi, and served for ten years (1990-2000) as that company's Division Manager in Salt Lake City.⁸ Prior to that he held various pilot positions with a number of other air taxi operators. Mr. DeLong holds an FAA Airline Transport Pilot license and has over 13,000 total flight hours.

On the basis of the above, we tentatively conclude that Salmon Air's management team will have the necessary managerial skills and technical ability to conduct the limited scheduled passenger operations that it proposes.⁹

Financial Condition and Operating Proposal

If granted the commuter authority it seeks, Salmon Air proposes to increase its current three weekly Salmon-McCall-Boise round trip flights to 14 weekly round trips during the peak season (July-August) and five weekly round trips during the off-season (September-June) using a 9-seat Piper PA-31-350 aircraft from its current fleet.¹⁰

The applicant states that it will use its current aircraft, personnel and facilities to provide these services, and that any start-up expenses will be minimal.¹¹ Salmon Air has provided a forecast of its expected revenues and expenses for the first year of commuter operations. These forecasts are based on the carrier's previous operating experience with the same aircraft in the same market. Salmon Air estimates that its expanded services will incur

⁸ During a significant portion of his time at Ameriflight, Mr. DeLong also served as that company's Assistant Chief Pilot and Training Captain.

⁹ In addition, before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of their skills and technical ability. The FAA advises us that Messrs. Schroeder, Gebhardt, and DeLong have been accepted by the FAA for their respective positions.

¹⁰ In total, Salmon Air expects to operate approximately 832 block hours during its first year of commuter operations. The company notes that, while its current plans call for using its Piper aircraft on this route, it may use its Cessna Caravan or another aircraft should traffic in the market warrant it in the future.

¹¹ Salmon Air notes that, in addition to the three weekly Salmon-Boise flights it currently operates, it also provides a number of charter flights in the same market and thus its operations at these cities are already staffed. It owns its operational facilities in Salmon and McCall and already leases counter and other facilities at Boise which it uses in its other services. The company expects that its proposed scheduled flights will reduce the number of charter flights it performs, thus freeing its current personnel to operate the scheduled services. Thus, the applicant expects that it will need to hire only one additional pilot as a result of its expanded services. Salmon Air also notes that it already has commuter level insurance coverage, and thus expects no additional up-front expenses in that regard.

approximately \$319,000 during the first year of operations.¹² We have reviewed Salmon Air's forecasts and believe them to be reasonable.

Salmon Air submitted balance sheets and income statements for the past three years. These statements show that, for the three year period ending December 31, 2000, the company had net income of \$144,678 on approximately \$3.6 million in revenues. Its balance sheet shows that, at December 31, 2000, the company had total assets of \$275,000, positive working capital of \$68,730, a current assets to current liabilities ratio of 1.6 to 1, and \$166,677 and \$134,603 in positive retained earnings and stockholders' equity, respectively.¹³

Based on our analysis of its forecast, we estimate that Salmon Air will need approximately \$80,000 to meet the Department's financial fitness criteria for its proposed commuter operations.¹⁴ It appears that the applicant's internal funds will be adequate to support the commencement of its planned scheduled flights. Moreover, we would expect that Salmon Air's on-going air taxi operations, which have been profitable overall in the past, will provide a reliable source of cash flow to the carrier to support its expanded services.

In light of the above, we tentatively conclude that Salmon Air will have access to resources sufficient to allow it to conduct the limited commuter operations it proposes without posing an undue risk to consumers or their funds.¹⁵

Compliance Disposition

Salmon Air also appears to have a favorable compliance disposition. The applicant states that there are no actions or outstanding judgments against it, its owners, or its key personnel, nor have any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations been brought against any of these parties in the past ten years. Salmon Air further states that there are no pending formal complaints filed

¹² We note that the company's additional Salmon-McCall-Boise flights will constitute only a small portion of Salmon Air's overall air carrier operations.

¹³ Since the carrier has not provided a breakdown of its liabilities into current and long-term obligations, we have treated all of the carrier's outstanding liabilities as a current obligation. We note, however, that \$50,000 of Salmon Air's liabilities is a loan owed to its owners, Ms. Wolters and Mr. Schroeder. Ms. Wolters advises that, while this loan is technically a current liability of the carrier (that is, payable by December 31, 2001), if the carrier needed these funds for its operations, the owners would not collect such monies owed. Thus, we would expect that, if required, this \$50,000, in addition to the \$68,730 in otherwise available working capital, would be available to support Salmon Air's expanded services.

¹⁴ To meet the Department's financial fitness criteria, an applicant should have access to financial resources sufficient to cover its pre-operating expenses and the expenses that are reasonably projected to be incurred during three months of operations. In calculating available resources, projected revenues may not be used.

¹⁵ As is our practice, however, prior to issuing Salmon Air effective commuter authority, we will require that the carrier provide us with updated information demonstrating that it continues to have sufficient financial resources available to it. We are also aware that Salmon Air has recently submitted a proposal in Docket OST-95-361 to provide subsidized essential air service at Ely, Nevada. Should the carrier be selected by the Department to conduct those services, Salmon Air's financial ability to conduct those services will be addressed in the context of that proceeding.

against the carrier, its owners or key personnel involving violations of the Statute or of the Federal Aviation Regulations.

Salmon has been involved in two accidents--in 1994 and 1999--and five incidents over the past ten years.¹⁶ The company was assessed a \$5,000 civil penalty by the FAA for violations of its rules in connection with its 1994 accident and a \$3,000 civil penalty in connection with a 1996 incident involving an aircraft that experienced problems because of improper weight and balance procedures. While Salmon Air's history is not without blemish, the FAA has advised us that the carrier has recently taken steps to strengthen its organization, including assigning a separate individual to be Chief Pilot (see **Managerial Competence** section above).¹⁷ The FAA further advises that the carrier's current operations are satisfactory and that the FAA has no objection to our authorizing Salmon Air to provide the expanded scheduled passenger services it proposes here. Moreover, a review of our records reveals no other information that reflects unfavorably on the carrier's compliance posture.¹⁸

Based on the above, we tentatively conclude that Salmon Air has the proper regard for the laws and regulations governing its proposed operations to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer practices will be followed.

CITIZENSHIP

49 U.S.C. 41102 requires that authority to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the Statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Salmon Air is an Idaho corporation. Its long-time owners, JoAnn Wolters and Daniel Schroeder, are U.S. citizens, as are its other key personnel. In addition, Salmon Air has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute and that it is actually controlled by U.S. citizens. Finally, our review of the

¹⁶ In August 1994, a Salmon Air pilot became disoriented and impacted short of the runway at Salmon. Three passengers were injured. In July 1999, a Salmon Air plane made an emergency landing which resulted in the aircraft undergoing sudden stoppage. One passenger was injured. The incidents involved aircraft that experienced engine problems, weight and balance problems, and brake problems.

¹⁷ In addition, Salmon Air states that it is also working with an outside consultant to explore and implement additional safety programs for its business.

¹⁸ A question recently arose as to whether services advertised in Salmon Air's web page included commuter-level services--scheduled services in excess of four round trips per week, as set forth in 14 CFR Part 298.2(e). Salmon Air responds that it does not believe that the flights in question are scheduled services to which that section would apply. We have referred the matter to our Office of the Assistant General Counsel for Aviation Enforcement and Proceedings for resolution of this issue.

application has uncovered no reason to suggest that control of Salmon Air rests with non-U.S. citizens.

Based on the above, we tentatively conclude that Salmon Air is a citizen of the United States and is fit, willing, and able to provide the scheduled passenger service it proposes as a commuter air carrier.

OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect that persons objecting to our tentative findings and conclusions will support their objections with relevant and material facts. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Salmon Air's fitness and commuter authority.

EFFECTIVE COMMUTER AUTHORIZATION CONDITIONS AND LIMITATIONS

In the event that we find Salmon Air fit, willing, and able to conduct the proposed commuter service, we will issue to it a Commuter Air Carrier Authorization. However, that authorization will not become effective until the carrier has fulfilled all requirements for effectiveness as set forth in the Terms, Conditions, and Limitations attached to its authorization.¹⁹ Among other things, this includes our receipt of evidence that the carrier has been issued Operations Specifications by the FAA authorizing scheduled passenger service under Part 135 of the Federal Aviation Regulations, evidence of liability insurance coverage that meets the requirements of Part 205 of our rules for commuter air carriers, and evidence that Salmon Air continues to have adequate financial resources available to it.

Moreover, given the limited scope of Salmon Air's proposed operations, our current findings on the company's fitness, particularly with respect to its financial resources and managerial capabilities, may not hold true if the company were to significantly change the scope of its operations. Therefore, we will limit Salmon Air's commuter authority to the operation of aircraft that can be operated under Part 135 of the Federal Aviation Regulations, that is, aircraft with nine passenger seats or less.²⁰ Should Salmon Air propose to operate larger aircraft, it must first be found fit to do so by the Department.

¹⁹ We also reserve the right to stay the effectiveness of Salmon Air's authority if any new information becomes available to us that warrants such action.

²⁰ We note that the operation of larger aircraft could require the carrier to obtain additional funds and/or hire additional management personnel.

Furthermore, we remind Salmon Air of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that commuter air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness. In this regard, should Salmon Air propose any substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.²¹ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under the Statute.²²

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue an order finding that Mountain Bird, Inc. d/b/a Salmon Air is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the award of authority set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-00-8059, and serve them upon all persons listed in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.²³
4. In the event that no objections are filed, we will consider all further procedural steps to be waived, and we will enter an order making final our tentative findings and conclusions

²¹ The carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. Moreover, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's commuter authority.

²² We also remind Salmon Air about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the commuter authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume commuter operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

²³ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

set out here and awarding Mountain Bird, Inc. d/b/a Salmon Air a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.

5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

SUSAN McDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>*



Specimen
Terms, Conditions, and Limitations

MOUNTAIN BIRD, INC.
d/b/a SALMON AIR

is authorized to engage in scheduled passenger air transportation operations as a commuter air carrier.

This authority is subject to the following provisions:

(1) The authority to conduct scheduled passenger operations will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b).

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for interstate scheduled passenger operations exceeding four round trips per week in any one market, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder shall at all times conduct its operations in accordance with the requirements of 14 CFR Part 298 and any other regulations prescribed by the Department of Transportation for the services authorized here, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

- (4) *The holder's authority is limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulations. In the event that the holder wishes to institute operations that would require Part 121 certification from the FAA, it must first be found fit for such operations.*
- (5) *The holder's authority is effective only to the extent that such operations are also authorized by the FAA, and comply with all FAA requirements concerning security.*
- (6) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (7) *The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render this authority ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this authority.*
- (8) *The holder shall maintain in effect at all times with the Department of Transportation current information on OST Registration Form 4507.*
- (9) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*
- (a) *The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.*
 - (b) *The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.*
- (10) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.*
- (11) *In the event that the holder does not commence actual flying operations as a commuter air carrier under this authority within one year of the date of the Department's determination of its fitness, its commuter authority shall be revoked for dormancy. Further, in the event that the holder commences but subsequently ceases all scheduled passenger operations, the authority granted here shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by*

the Department. Moreover, if the holder does not resume such operations within one year of its cessation, its commuter authority shall be revoked for dormancy.

**SERVICE LIST FOR MOUNTAIN BIRD, INC.
d/b/a SALMON AIR**

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